IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GEORGE W. HARRISON, et al.,	:	
	:	
Plaintiffs,	:	CIVIL ACTION
	:	
v.	:	NO. 99-1418
	:	
WASTE SYSTEM AUTHORITY OF EASTERN MONTGOMERY COUNTY, et al.,	:	
	:	
Defendants.	:	

M E M O R A N D U M

BUCKWALTER, J. March 7, 2000

Presently before the Court in this 42 U.S.C. §1983 action is Defendant Waste System Authority of Eastern Montgomery County, et al.'s ("Defendants" and/or "WSA") Rule 12(c) Motion for Partial Judgment on the Pleadings and Plaintiffs George W. Harrison, et al's[1] ("Plaintiffs" and/or "Harrison") response thereto. Defendant seeks the Court's disposal of the First, Second and Third Count of Harrison's Complaint.

1. The motion at issue in this case seeks dismissal of claims in two separate complaints. Civil Action No. 99-1418 deals with the same Plaintiffs, however, the defendants are The Waste System Authority of Eastern Montgomery County, Montgomery County, and Banque Paribas. Civil Action No. 99-1782 deals with the same defendants but is filed on behalf of the plaintiff The Pennsylvania Independent Waste Haulers Association. As Civ.A.No. 99-1418 and 99-1782 involve different plaintiffs and therefore, different complaints, the Defendants' Motion for Partial Judgment on the Pleadings will be addressed separately with regard to each respective civil action.

I. BACKGROUND

WSA was part of a financing arrangement to build a trash-to-steam facility (the "Facility") in the Eastern District of Montgomery County, Pennsylvania, which cost approximately $160 million. WSA agreed to provide sufficient revenue to pay for the financing of the Facility. In 1988, WSA and Montgomery County (the "County") established a scheme of flow control ordinances that would capture the flow of waste generated in the district and generate the necessary revenues through tipping fees charged to the haulers that brought the waste to the Facility. On May 16, 1994, the United States Supreme Court decided the case of C & A Carbone, Inc. v. et al v. Town of Clarkstown, 511 U.S. 383 (1994)[2], and the WSA recognized the existing flow control scheme was violative of the Commerce Clause. The County eventually appointed a Blue Ribbon Panel (the "Panel") to formulate a new scheme to replace the flow control ordinance.

In January 1998, the Panel provided a report of its efforts in an attempt to find an alternative arrangement which would assure both adequate revenues and a stream of waste to the Facility. The Report proposed a scheme by which the owners of real property in the district would be charged directly by enough fees each year to provide the revenues to pay for the Facility and the haulers would be permitted to dump the waste generated in the district at the Facility for a zero tipping fee. This scheme was the WGF system. The WGF system resulted in the haulers paying nothing to dump at the Facility and economically compelled the real property

2. Both Harrison and Defendants concede that the Carbone case does not deal with the issue of standing, but rather, with the issue of the dormant Commerce Clause.

owners to have to engage haulers who would dispose of the waste only at the Facility or else pay additional charges to have the waste disposed of other than at the Facility.

WSA, by publicity and direct communications, instructed homeowners and commercial establishments to deduct the amount of the Waste Generation Fee from whatever they were paying their private haulers. The individual plaintiffs, who form three groups of property owners, have been assessed fees from 17% to 300% more than their former charges for both hauling and disposal. As a result, several commercial entities under contract with Harrison have deducted the amount of this fee they pay from the sums they are otherwise obligated to pay Harrison under the terms of their contracts with him.

II. STANDARD

A motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12 © is treated under the same standard as a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). See Regalbuto v. City of Philadelphia, 937 F. Supp. 374, 376-77 (E.D. Pa. 1995) (Padova, J.), aff'd without op., 91 F.3d 125 (3d Cir.), cert. denied, 117 S. Ct. 435 (1996). Consequently, judgment under Rule 12(c) will only be granted where the moving party has clearly established that no material issue of fact remains to be resolved and that the movant is entitled to judgment as a matter of law. See Institute for Scientific Info., Inc. v. Gordon and Breach, Science Publishers, Inc., 931 F.2d 1002, 1005 (3d Cir.), cert. denied, 502 U.S. 909 (1991). Additionally, the court must view the facts and inferences to be drawn from the pleadings in the light most favorable to the non-moving party. See Janney Montgomery Scott, Inc. v. Shepard Niles, Inc., 11 F.3d 399, 406 (3d Cir. 1993).

III. DISCUSSION

A. Count One--Commerce Clause

1. Standing

a. *Constitutional Requirements:*

WSA contends that Plaintiffs[3], do not have standing to assert Commerce Clause challenges against waste disposal systems. Pursuant to this Court's ruling in the related case, Oxford Associates v. Waste System Authority of Eastern Montgomery County, C.A. No. 3026, 1999 WL 1022963, (E.D. Pa. Nov. 9, 1999), it is this Court's consistent ruling that Plaintiffs Charles Colletti, Colletti's Town Tavern, Inc., Fin Group, Inc., Trinacria Partnership, Enzo Sciarra, Prussia, Inc., and Prussia Associates Limited Partnership, as a collection of individual waste generators, lack standing to raise a dormant Commerce Clause challenge. However, as the Amended Complaint establishes, George W. Harrison is a waste hauler, and therefore, the issue of standing must be revisited.

In order to have standing under Article III of the United States Constitution, a plaintiff must show (1) an actual injury that is (2) causally connected to the conduct complained of and (3) likely to be "redressed by a favorable decision." Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992) (internal quotation marks omitted). The injury must consist of an invasion of a judicially cognizable interest which is (a) concrete

3. Plaintiff George W. Harrison is to be distinguished from the other plaintiffs, in that, he has brought this lawsuit as the lone waste hauler. The remaining plaintiffs are simply waste generators--a distinction that is highly relevant to this particular discussion.

and particularized and (b) actual or imminent, not conjectural or hypothetical. Id. at 560, 112 S.Ct. 2130 (citations and internal quotation marks omitted).[4]

WSA points out that "[p]laintiffs must have standing at all stages of the litigation, and they bear the burden of proving it 'with the manner and degree of evidence required at the successive stages of the litigation." Public Interest Research Group of New Jersey, Inc. v. Magnesium Elektron, Inc., 123 F.3d 111, 117 (3d Cir.1997). In citing the United States Court of Appeals for the Third Circuit, WSA contends that Harrison has failed meet his burden. I find, however, that Harrison has sufficiently plead that he has suffered economic injury-in-fact, that the injury can be traced to the ordinance at issue, and that said injury could be redressed by equitable relief and/or damages against the County. As a result of the WGF system, several commercial entities under contract with Harrison have deducted the amount of the sums that they are obligated to pay Harrison under the terms of their contracts with him. As the Constitutional limitations on standing have been met here, we move to the prudential limitations.

b. *Prudential Limitations*:

The concept of standing also encompasses prudential limits on federal-court jurisdiction. Powell v. Ridge, 189 F.3d 387, 404 (3d. Cir. 1999) See Warth v. Seldin, 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). "Courts require plaintiffs to satisfy certain prudential concerns in an effort 'to avoid deciding questions of broad social import where no individual rights would be vindicated and to limit access to the federal courts to those litigants best suited to assert a particular claim.'" Id. (quoting Gladstone, Realtors v. Village of

4. Defendants apparently concedes that Plaintiffs have Article III "case or controversy" standing and, as a result, the Court will not address this aspect of the standing issue any further.

Bellwood, 441 U.S. 91, 99-100, 99 S.Ct. 1601, 60 L.Ed.2d 66 (1979). Thus, it is required that:

> (1) that the injury alleged not be a 'generalized grievance' that is 'shared in substantially equal measure by all or a large class of citizens,' (2) that the plaintiff assert his/her own legal rights rather than those of other parties, and (3) that 'the plaintiff's complaint . . . fall within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question.'

Id. (quoting Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 474-75, 102 S.Ct. 752, 70 L.Ed.2d 700 (1982) (internal quotation marks omitted)). While Defendants contend that Harrison is asserting third party claims or general grievances for purposes of the three-prong prudential standard test, the Amended Complaint does not seem to suggest this and therefore, our focus will be on the third prong--the zone of interest protected or regulated by the Commerce Clause of the United States Constitution.

The United States Court of Appeals for the Third Circuit has established a "liberal" application of the "zone of interest" test. UPS Worldwide Forwarding, Inc. v. United States Postal Service, 66 F.3d 621, 630-31 (3d Cir. 1995). In light of this "liberal" application, we cite to a footnote in the Oxford Associates decision, wherein this Court stated, "[t]his is not to say that no parties lack standing to raise this claim, however, Plaintiffs' argument does not pass muster. Clearly, there are underlying Commerce Clause concerns in this case, yet the Plaintiffs are not the ones who may have a claim here." The footnote was included in anticipation of the very case at issue here. While I do not find that waste generators have standing in this case, at this stage of the litigation, I cannot say the same for waste haulers.

As the Amended Complaint establishes, Harrison is an individual who does business as George W. Harrison Trash Removal. His principal office and place of business is located in Lansdale, Montgomery County, Pennsylvania. He claims that based on instructions given by WSA, several commercial entities, under contract with Harrison, have deducted the amount of the WGF from the sums that they are otherwise obligated to pay him under existing contracts. Clearly, when reading the Amended Complaint if the light most favorable to the non-moving party, Harrison does have standing to assert a Commerce Clause claim.

Here, Harrison satisfies both the constitutional requirements and the prudential conditions for standing. "As a classic plaintiff asserting his own economic interests under the Commerce Clause--a constitutional provision specifically targeted to protect those interests--..." Harrison avoids any concerns relative to the zone of interests requirement.[5] Houlton Citizens' Coalition v. Town of Houlton, 175 F.3d 178, 183 (1st.Cir. 1999)("an in-state business which meets constitutional and prudential requirements due to the direct or indirect effects of a law purported to violate the dormant Commerce Clause has standing to challenge that law")[6]; see also, Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 475 (1982).

It is important to note that the merits of the Commerce Clause claim are not at issue in this case, nor were they at issue in Oxford Associates. This Court acknowledges that

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5. As applicable, it is important to note that the Houlton court also concluded that the plaintiff's "claim to standing is not damaged because he failed to allege that he hauled garbage out-of-state or planned to do so." Houlton Citizens Coalition v. Town of Houlton, 175 F.3d 178, 183 (1st Cir. 1999).

6. In Houlton, the United States Court of Appeals for the First Circuit chose not to address whether or not the waste generators had standing to mount a challenge in their own right, however, pursuant to my decision in Oxford Associates, I have chosen not to follow this aspect of the First Circuit's rationale in concluding that the individual waste generator plaintiffs in the case at bar lack standing here.

when a locality enacts a law that facially favors a local outfit over outsiders, that particular law violates the Dormant Commerce Clause, and in light of the current stage of this litigation, we must aver that the ordinance at issue does, in fact, explicitly favor WSA.[7]

B. Count Two--Sherman and Clayton Anti-Trust Acts

Count Two of Harrison's Amended Complaint alleges a violation of the Sherman and Clayton Antitrust Acts. Defendants defend this Count on the grounds that the Defendants are immune to antitrust liability under the state action exemption. Harrison counters by asserting that no immunity can be afforded to Defendants because (a) Harrison does not seek damages from the government and (b) the Defendants' ordinance was not authorized by the state pursuant to a state policy to displace competition with regulation or monopoly public service.

The United States Court of Appeals for the Third Circuit addressed this particular issue in Hancock Industries v. Schaeffer, 811 F.2d 225 (3d Cir.1987). In Hancock, commercial trash haulers sued Chester County and County officials, claiming that the officials' decision to limit dumping at a landfill to trash generated within the County violated federal antitrust laws. In affirming the lower court's decision, the Third Circuit agreed that pursuant to the United States Supreme Court's ruling in Town of Hallie v. City of Eau Claire, 471 U.S. 34 (1985)("once a municipality is authorized to act to perform a particular governmental function, it is immune from antitrust liability if the resulting anticompetitive effects would logically flow from this

7. For purposes of clarity, this Court is compelled to elaborate by stating that the difference between our decision in Oxford Associates and the case at bar, is simply that the former case dealt with only waste generator plaintiffs. As we decline to address the merits of the Commerce Clause claim, it should be noted that we anticipate doing so in the future. As such, the issue of standing is not yet dead, for this Court has assumed that the issue will be revisited in future pleadings. Under the unique facts of this case, notwithstanding the Oxford Associates holding, we do not find that the nature of the 12(c) Motion allows for us to find in favor of the moving party as the Motion pertains to the issue of standing.

authority."), the defendant municipality was immune from antitrust liability. The Third Circuit continued:

> [f]inding that the Pennsylvania Solid Waste Management Act placed a duty municipalities and counties to dispose of their own waste, the district court concluded that closure of a landfill owned by a municipal or county authority to out-of-county waste 'is a logical consequence of the state created power and obligation of a municipality to provide for the disposal of its own waste.

Hancock Industries v. Schaeffer, 811 F.2d at 232.

Harrison contends that Hancock Industries was decided prior to the Pennsylvania Supreme Court's holding that the flow control provisions of the Pennsylvania Solid Waste Management Act and its regulations were an unconstitutional violation of the Commerce and Contract Clauses in Empire Sanitary Landfill, Inc. v. Commonwealth, Department of Environmental Resources, 546 Pa. 315, 684 A.2d 1047 (1996). Harrison claims that because WSA has failed to point to any specific constitutional provisions of the Pennsylvania Solid Waste Management Act, WSA has not shown any basis for its claimed antitrust immunity from injunctive relief.

I find this conclusion to be inconsistent with the holdings in Hancock Industries and Empire Sanitary Landfill, in that, although the Pennsylvania Supreme Court found certain provisions of the Pennsylvania Solid Waste Management Act to be unconstitutional, the court did not address the issue of antitrust immunity. Our focus must be on the Hancock Industries Court where it held that "the municipality need not be able to point to a specific, detailed legislative authorization that expressly mentions anticompetitive actions." Hancock Industries, 811 F.2d at 233. I do not find that WSA must point to any specific constitutional provision of the

Pennsylvania Solid Waste Management Act in order to maintain antitrust immunity. Therefore, Defendants WSA and Montgomery County are immune to suit for damages under the Sherman and Clayton Acts.[8]

C. Count Three--State Claims

Defendants assert that should this Court dismiss all of Harrison's federal claims, it should then dismiss the pendant state-law claim contained in Count Three of the Amended Complaint. As I have not dismissed all of Harrison's federal claims, pendant jurisdiction remains in existence. Therefore, Harrison's claims, as set forth in Count Three, survive this Motion.

IV. CONCLUSION

Count One survives this Motion for Partial Judgment on the Pleadings, for Harrison is a waste generator and as a result, has standing to raise the Commerce Clause allegations. Moreover, the Amended Complaint explicitly states that Defendants interfered with existing contractual obligations and therefore, survives said Motion. Count Two is dismissed as it pertains to Defendants WSA and Montgomery County, for these municipal entities are immune from suit. Count Two survives, however, as it pertains to Defendant Banque Paribas, as any

8. In Hancock Industries v. Schaeffer, 811 F.2d 225, 232 (3d Cir.1987), the court adopted the standard set forth in Town of Hollie v. City of Eau Claire, 471 U.S. 34 (1985), and determined that that standard was applicable to the county (a political subdivision) and that applicable to the authority (a state agency). For the very same reasons, we applied the standard to both WSA and Montgomery County. However, no argument was made on behalf of Defendant Banque Paribas, and because he is an individual, there is no basis for finding him immune to antitrust liability. While Hancock Industries involved an individual defendant, the immunity issue was applied only to the county and the authority. As a result, I am inclined to dismiss Count Two, only as it applies to WSA and Montgomery County.

question regarding his immunity was not addressed. Count Three also survives this Motion, for pendant jurisdiction remains in existence.

As WSA's Reply Brief in Support of the Rule 12(c) Motion suggests, there is some evidence that could be lethal to Harrison's Commerce Clause claim. WSA alleges that Harrison's business was sold effective March 15, 1999, and as a result he no longer has standing to assert a Commerce Clause violation. WSA requests that this Court order Harrison's counsel to submit a surreply brief, addressing the single question of whether Harrison sold his business and therefore loses standing as the real party-in-interest. The attached Order shall grant WSA's request.

An appropriate Order follows.

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GEORGE W. HARRISON, et al.,	:	
Plaintiffs,	:	
	:	CIVIL ACTION
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	:	NO. 99-1418
WASTE SYSTEM AUTHORITY	:	
OF EASTERN MONTGOMERY COUNTY,	:	
et al.,	:	
Defendants.	:	

O R D E R

AND NOW, this 7th day of March, 2000, upon consideration of Defendants Waste System Authority of Eastern Montgomery County, et al.'s Motion for Partial Judgment on the Pleadings, and Plaintiff George W. Harrison, et al.'s responses thereto, it is hereby ORDERED and DECREED that said Motion is DENIED in part and GRANTED in part.

It is FURTHER ORDERED and DECREED that:

1. Count One, as it pertains to Plaintiffs Charles Colletti, Colletti's Town Tavern, Inc., Fin Group, Inc., Trinacria Partnership, Enzo Sciarra, Prussia, Inc., and Prussia Associates Limited Partnership, as a collection of individual waste generators, is hereby DISMISSED as these plaintiffs lack standing to raise a dormant Commerce Clause challenge.

2. Count Two, as it pertains to Defendants WSA and Montgomery County, is hereby DISMISSED for these municipal entities are immune from suit.

3. Harrison shall submit a surreply brief within two weeks of the date of this Order, addressing the question of whether Harrison has sold his business and therefore lacks standing as the real party in interest.

BY THE COURT:

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RONALD L. BUCKWALTER, J.